

COMMENTS ON THE NOTICE OF PROPOSED RULEMAKING FOR PART 1639 OF THE LSC REGULATIONS

**Submitted by the Committee on Restrictions and Regulations
Of the Civil Policy Group
National Legal Aid and Defender Association
January 25, 2002**

In response to the November 26, 2001 notice in the *Federal Register*, the National Legal Aid and Defender Association (NLADA) Civil Policy Group (CPG), through its Committee on Restrictions and Regulations (the Committee)¹ is pleased to submit these comments to the Legal Services Corporation (LSC) regarding the Notice of Proposed Rulemaking (NPRM) for Part 1639 of the Legal Service Corporation regulations on Welfare Reform.

The NPRM is intended to implement the change in the LSC Appropriations Act necessitated by the Supreme Court's February 28, 2001 decision in *LSC v. Velazquez*, 121 S. Ct. 1043 (2001), which struck down on First Amendment grounds the provision in the LSC appropriations act (§504(a)(16)) that prohibited LSC grantees from challenging existing welfare reform laws in the context of representing an individual client who is seeking specific relief from a welfare agency.

Under the NPRM, §1639.4 would be revised to read:

Recipients may represent an individual eligible client who is seeking specific relief from a welfare agency.

The effect of this revision would to incorporate the Supreme Court's decision in *Velazquez*, the provision of LSC Program Letter 01-3 and the recent amendment of Section 504(a)(16) of the FY 2002 LSC Appropriations Act into Part 1639 and make it explicit that LSC recipients are permitted to fully represent individual eligible clients seeking relief from a welfare agency, even if that representation involves a challenge to an existing welfare reform law.

¹ The Regs Committee is chaired by Richard Halliburton (Legal Aid of Western Missouri) and the members are Mary Asbury (Legal Aid Society of Cincinnati), Jon Asher (Colorado Legal Services), Howard Belodoff (Idaho Legal Aid Services), Terry Brooks (ABA, Division for Legal Services), Robert Gillett (Legal Services of Southern Michigan), Bruce Iwasaki (Legal Aid Foundation of Los Angeles), Lillian Johnson (Community Legal Services), Lisa Krooth (Community and Indian Legal Services), Pat McIntyre (Northwest Justice Project), Richard McMahon (New Center for Legal Advocacy), De Miller (Legal Services of New Jersey), Ben Obregon (Client member – Madison, WI), Jose Padilla (California Rural Legal Assistance), Linda Rexer (Michigan State Bar Foundation), Regina Rogoff (Legal Aid of Central Texas), Ernesto Sanchez (Idaho Legal Aid Services), John Trujillo (Southern New Mexico Legal Services), Mary Wilson (Client member - West Texas Legal Services). Linda Perle and Alan Houseman of the Center for Law and Social Policy staff the committee, and Gerry Singsen of Singsen and Tyrrell provides consultant services.

On behalf of NLADA, the Committee agrees that the NPRM is the appropriate response to the *Velazquez* decision. The only additional change that we would suggest is that LSC also remove the definition of "existing law" from §1639.2(b) of the LSC regulation, since the only place that this term is used in the language of Part 1639 is in the phrase that is proposed to be deleted by the NPRM.

If you have any questions regarding these comments, please feel free to contact our counsel, Linda Perle, at the Center for Law and Social Policy. Linda can be reached at lperle@clasp.org or by phone at 202-906-8002.